U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. LEWIS and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Los Angeles, CA

Docket No. 98-26; Submitted on the Record;
Issued October 8, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's attendant allowance; and (2) whether appellant has met her burden of proof to establish that her left knee condition and arthroscopic surgery were causally related to her accepted August 19, 1988 employment injury.

On August 19, 1988 appellant, then a 59-year-old clerk-typist, filed a traumatic injury claim (Form CA-1) alleging that on that date she sprained a muscle in the groin area, which effected her left leg and caused spasms and lower back pain, when her chair rolled out from under her as she attempted to sit down on the chair. She stopped work on August 22, 1988.

The Office accepted appellant's claim for a lumbosacral strain, lumbar radiculitis and left groin strain. Subsequently, the Office authorized appellant's request for an attendant allowance.

In an April 29, 1996 letter, appellant referenced a previous letter dated October 22, 1995 and requested an attendant allowance and authorization for her left knee surgery. In response, the Office referred appellant along with a statement of accepted facts, medical records, a list of specific questions and a Form EN-1090 to Dr. Michael Mahdad, a Board-certified neurologist, and to Dr. Ian D. Brodie, a Board-certified orthopedic surgeon, by letters dated May 20, 1996. By letters of the same date, the Office advised Drs. Mahdad and Brodie of the referral.

In a notice of proposed termination of attendant allowance dated June 26, 1997, the Office advised appellant that it proposed to terminate her attendant allowance on the grounds that the weight of the medical evidence of record established that she did not need constant assistance with her personal needs.

By decision dated July 31, 1997, the Office terminated appellant's attendant allowance on the grounds that the medical evidence of record failed to substantiate that attendant services were necessary as claimed. The Office further found the medical evidence of record insufficient

to establish a causal relationship between appellant's left knee condition and surgery, and her August 19, 1988 employment injury.

The Board finds that the Office properly denied appellant's request for payment of an attendant allowance.

Section 5 U.S.C. § 8111(a) of the Federal Employees' Compensation Act provides that an injured employee who has been awarded compensation may be entitled to an attendant allowance, if the services of an attendant are required constantly because the employee is totally blind, has lost the use of both hands or both feet, is paralyzed and unable to walk, or has other disability resulting from the injury which makes the employee so helpless as to require constant attendance for personal needs, such as feeding, dressing or bathing.

Where the evidence strongly suggests that the claimant may require the services of an attendant or where the claimant inquires about such entitlement, the Office's own procedures require that the claimant complete Form CA-1086, request to employee for information to determine entitlement to attendant allowance and Form CA-1090, and that appellant's treating physician complete a request to physician or hospital for report on need for attendant. Following receipt of this evidence, the Office district medical adviser is to review the record to determine whether the claimant requires the services of an attendant.[1]

The factors to be considered in evaluating entitlement to attendant's allowance are as follows:

> "(a) The particular kinds of activities for which assistance is needed. (The assistance must be for personal needs such as bathing or dressing, not for such tasks as cooking or housekeeping.)
>
> (b) The need for daily assistance in these activities.
>
> (c) The nature of the disability.
>
> (d) The amount which the claimant pays the attendant, or the reasonable value of the actual assistance rendered by the attendant.
>
> (e) Any other facts which may be relevant to the situation."[2]

In this case, Dr. Bryan indicated in a May 15, 1995 Form EN-1090 that appellant could walk, feed herself and get out of bed without assistance. Dr. Bryan further indicated that appellant required assistance to travel, to dress and bathe herself, to get out of doors and to take exercise. Dr. Bryan further indicated that appellant required an attendant due to chronic spine

[1] Federal (FECA) Procedure Manual, Chapter 2.812.8, *Periodic Review of Disability Cases*, Part 2 -- Claims, July 1993.

[2] *Id.* Attendant's allowance is payable for a member of the claimant's family who performs the services of an attendant. In the present case, appellant's marriage to her attendant would not preclude payment for attendant services performed; *see Grant S. Pfeiffer*, 42 ECAB 647 (1991).

degenerative changes, obesity and bilateral hip replacement. The Board notes that none of these conditions were accepted by the Office as employment-related conditions. Further, Dr. Bryan did not provide any medical rationale explaining how or why these conditions were related to appellant's August 19, 1988 employment injury. Therefore, Dr. Bryan's opinion is insufficient to establish that appellant should continue to receive an attendant allowance.

Dr. Mahdad submitted a June 7, 1996 second opinion medical report revealing a history of appellant's August 19, 1988 employment injury, employment, medical treatment and social life. He indicated a review of medical records, and his findings on physical and neurological examination. Dr. Mahdad diagnosed status post low back injury in 1988 which resulted in left L5 radiculopathy, a history of an improved left groin strain, severe osteoarthritis that was most likely related to chronic use of Prednisone and was nonindustrial. He questioned the existence of left carpal tunnel syndrome that was nonindustrial and noted a history of left knee contusion and status post left knee arthroscopic surgery. Dr. Mahdad stated that appellant's back and left groin conditions were employment related while appellant's symptoms including hip and left knee problems, and shoulder and wrist pain were not employment related. He stated that the nonemployment-related conditions were due to appellant's obesity, asthma and chronic intake of corticosteroids. Dr. Mahdad opined that appellant continued to suffer from residuals of her accepted employment injury concerning her back and left leg which were permanent. He concluded that if it were not for appellant's complicating medical conditions, her 1988 employment injury would not have resulted in a disability that required an attendant allowance. Dr. Mahdad further concluded that appellant required partial home health care due to her lumbar radiculopathy, low back pain and inability to perform household chores.

In response to the Office's September 30, 1996 letter regarding clarification of his statement that appellant required partial home health care, Dr. Mahdad completed a Form EN-1090 indicating that appellant could feed, dress and bathe herself, and get out of bed without assistance. Dr. Mahdad also noted that appellant required assistance to travel, to walk, to get out of doors and to take exercise.

Dr. Brodie submitted a June 12, 1996 second opinion medical report revealing a history of appellant's August 19, 1988 employment injury and medical treatment. Dr. Brodie noted his findings on physical and objective examination. He stated that it was inappropriate to evaluate appellant's orthopedic condition postoperative of arthroscopic surgery and that a further in depth evaluation of appellant's back and lower extremities should be performed. Dr. Brodie concluded that appellant's back condition was related to the August 19, 1988 employment injury. He further concluded that appellant required total hip replacements of either hip joint and that the disintegration of appellant's hip joints may have been due to chronic use of steroids for the treatment of her asthma. Additionally, Dr. Brodie concluded there was no indication that appellant's left knee was continually troublesome from 1988 through surgery in 1996 due to the employment injury. He noted that appellant's foot drop and history of left-sided paralysis occurring in 1990 appeared to be due to a cerebral vascular accident that would be best evaluated by a neurologist, and concluded that there was no correlation between her 1990 stroke and her employment injury.

In response to the Office's November 22, 1996 letter requesting a supplemental medical report addressing the issue whether appellant should continue to receive an attendant allowance, and whether appellant's knee condition and surgery were causally related to the employment injury, Dr. Brodie submitted a December 11, 1996 report. In this report, Dr. Brodie indicated appellant's complaints at the time of the examination and the results of appellant's knee surgery.

Dr. Brodie submitted a March 17, 1997 supplemental medical report in response to the Office's February 14, 1997 letter again requesting him to address whether appellant should continue to receive an attendant allowance. In this report, he opined that appellant's disability was due to the 1988 employment injury, and to several nonoccupational conditions including, severe arthritis of both hips, status post hip replacement surgery, secondary to Prednisone and steriod use for chronic asthma, asthma, obesity and carpal tunnel syndrome. Dr. Brodie further opined that appellant's knee surgery had no significant relationship to her August 19, 1988 employment injury. He concluded that appellant required home help with her household chores which was directly caused by her back injury resulting in a chronic back strain with left leg sciatica and a drop foot. Dr. Brodie further concluded that an attendant allowance and personal care that appellant would receive would be solely on the basis of her multiple nonoccupational medical conditions.

Inasmuch as the opinions of Drs. Mahdad and Brodie constitute the weight of the medical opinion evidence in this case, the Board finds that the Office properly terminated appellant's attendant's allowance.

The Board further finds that appellant has failed to meet her burden of proof to establish that her left knee condition and arthroscopic surgery were causally related to her accepted August 19, 1988 employment injury.

A person who claims benefits under the Act[3] has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative, and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.[4] As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.[5] The mere fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between the condition and the employment.[6] Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.[7]

[3] *Id.*

[4] *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

[5] *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[6] *Juanita Rogers*, 34 ECAB 544, 546 (1983).

[7] *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

The record reveals Dr. Bryan's June 14, 1996 medical report indicating that appellant's knee surgery should be considered as an employment injury "based on the fact that it was, most likely, caused by [appellant's] chronic back problem which caused her to slip and fall." Dr. Bryan's opinion that appellant's knee surgery was "most likely" caused by her accepted back condition is speculative. The Board has held that medical opinions which are speculative are of limited probative value.[8] Therefore, Dr. Bryan's opinion is insufficient to establish appellant's burden.

Dr. Brodie opined in his June 12, 1996 and March 17, 1997 supplemental medical reports that appellant's knee surgery was not causally related to her August 19, 1988 employment injury. Inasmuch as Dr. Brodie's opinion is based on a complete and accurate medical background, as noted above, the Board finds that his opinion constitutes the weight of the medical opinion evidence. Therefore, appellant has failed to satisfy her burden.

The July 31, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
October 8, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[8] *See Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).